Muhammed Yusoff Rawther v Dato' Seri Anwar bin Ibrahim

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCvC-491–07 OF 2021
ROZ MAWAR J
4 JUNE 2025

Constitutional Law — Courts — Reference to Federal Court — Plaintiff instituted action against defendant in his personal capacity alleging sexual assault and trespass to person — Defendant applied to refer constitutional questions to Federal Court and stay proceedings — Whether Federal Constitution accorded Prime Minister any form of procedural immunity or protection from civil liability while in office — Federal Constitution arts 5, 8, 39, 40, 43 & 128(2) — Courts of Judicature Act 1964 s 84

This civil action, filed prior to the defendant's appointment as the Prime Minister in November 2022, was instituted by the plaintiff against the defendant in his personal capacity, alleging sexual assault and trespass to person. By way of encl 145, the defendant sought to: (a) refer constitutional questions to the Federal Court touching on whether a sitting Prime Minister enjoyed certain immunities or protections from civil litigation relating to pre-office conduct — under O 92 r 4 of the Rules of Court 2012 and/or art 128(2) of the Federal Constitution ('the FC') and/or s 84 of the Courts of Judicature Act 1964 ('the CJA'); and (b) stay the trial pending the Federal Court's determination of the constitutional questions. The defendant submitted that the continuation of these proceedings engaged constitutional issues concerning the interpretation and effect of arts 5, 8, 39, 40, and 43 of the FC. It was further suggested that a sitting Prime Minister should be insulated from the burdens of civil litigation, and that this court ought to refer these issues for the determination of the Federal Court pursuant to art 128(2) of the FC.

Held, dismissing the defendant's application:

(1) The threshold under s 84 of the CJA was not met, and the constitutional questions posed appeared more speculative or academic than genuinely arising from the proceedings. The proposed questions were not necessary for the disposal of the case. The defendant's application was misconceived as to the jurisdiction of the courts and it was based on speculative doctrines with no constitutional footing. The affidavits-in-support repeated political and reputational narratives rather than identifying precise legal controversies grounded in constitutional text (see paras 6 & 9).

(2) No deprivation of liberty as the apparent fact was that the defendant remained at liberty, without any curtailment of movement or legal capacity. The act of requiring a defendant to respond to a civil claim — however politically sensitive, did not implicate art 5(1) of the FC, and no precedent had stretched its ambit to encompass civil litigation exposure. The contention that art 5(1) of the FC was violated merely by the existence of a tort claim was unsupported in constitutional law. Accordingly, art 5(1) of the FC was not engaged, and no interpretation or effect of this provision arose in the resolution of this claim (see paras 12–13).

(3) Article 8(1) of the FC was a shield, not a sword for immunity. The provision guaranteed equal legal treatment, not exemption from the law. The defendant had not shown that there was any discriminatory conduct by the courts or the law. The defendant had not demonstrated that he was being denied legal protection afforded to others, or that any legal provision operated unequally against him. Moreover, mere allegation of mala fides was insufficient. While the defendant raised political motive and abuse of process, such defences were available under general civil law. Hence, no genuine or arguable issue as to the interpretation or application of art 8(1) of the FC arose to warrant a reference to the Federal Court (see paras 15–16).

(4) Article 39 of the FC was a structural allocation of powers and did not confer any personal immunity upon the Prime Minister or Cabinet members. Nothing in art 39 of the FC suggested, expressly or impliedly, that executive authority included protection against personal civil liability. Thus, art 39 of the FC cited inoperative in the context of the defendant's application for constitutional reference (see para 18).

(5) The defendant's reliance on art 40 of the FC as a basis for constitutional immunity was misplaced. The provision was silent on personal rights or liabilities, and no issue as to its interpretation or validity arose in this suit. It bore no legal connection to the tortious cause of action pleaded by the plaintiff (see para 20).

(6) No clause in art 43 of the FC shielded a sitting Prime Minister from accountability in respect of private acts committed prior to assuming office. Constitutional silence was not equivalent to immunity. None of the articles of the FC cited by the defendant gave rise to any real, substantial, or justiciable question of constitutional law requiring determination by the Federal Court under art 128(2) of the FC or s 84 of the CJA. The defendant's invocation of these provisions was based on a mischaracterisation of structural provisions as conferring substantive personal immunity, which the constitutional text did not support (see paras 22–23).

(7) ideology of 'constructive harm' to the Prime Minister's office that warranted constitutional immunity had no textual or jurisprudential basis. No provision in the FC implied immunity for the Prime Minister from civil suits. As this suit did not involve the validity of any law nor a Federal-State dispute but a private claim under tort law, therefore it fell squarely within this court's jurisdiction. This suit was filed before the defendant assumed the office of Prime Minister and there was no proof that he was unable to discharge his constitutional functions due to this case. Thus, the suggestion that this litigation burdened the executive branch was unsupported and speculative (see paras 24 & 33–34).

[Bahasa Malaysia summary

Tindakan sivil ini, yang difailkan sebelum pelantikan defendan sebagai Perdana Menteri pada November 2022, telah dimulakan oleh plaintif terhadap defendan dalam kapasiti peribadinya, dengan dakwaan serangan seksual dan pencerobohan terhadap individu. Melalui lampiran 145, defendan memohon untuk: (a) merujuk soalan-soalan perlembagaan kepada Mahkamah Persekutuan yang menyentuh sama ada seorang Perdana Menteri yang sedang memegang jawatan menikmati kekebalan atau perlindungan tertentu daripada litigasi sivil yang berkaitan dengan kelakuan sebelum memegang jawatan — di bawah A 92 r 4 Kaedah-Kaedah Mahkamah 2012 dan/atau perkara 128(2) Perlembagaan Persekutuan ('PP') dan/atau s 84 Akta Mahkamah Kehakiman 1964 ('AMK'); dan (b) menangguhkan perbicaraan sementara menunggu keputusan Mahkamah Persekutuan mengenai soalan-soalan perlembagaan tersebut. Defendan mengemukakan bahawa penerusan prosiding ini melibatkan isu-isu perlembagaan yang berkaitan dengan interpretasi dan kesan perkara 5, 8, 39, 40, dan 43 PP. Selanjutnya dicadangkan bahawa seorang Perdana Menteri yang sedang memegang jawatan harus dilindungi daripada beban litigasi sivil, dan bahawa mahkamah ini sepatutnya merujuk isu-isu ini untuk penentuan oleh Mahkamah Persekutuan menurut perkara 128(2) PP.

Diputuskan, menolak permohonan defendan:

(1) Ambang di bawah s 84 AMK tidak dipenuhi, dan soalan-soalan perlembagaan yang dikemukakan kelihatan lebih bersifat spekulatif atau akademik berbanding sebenarnya timbul daripada prosiding. Soalan-soalan yang dicadangkan tidak perlu untuk pelupusan kes. Permohonan defendan telah disalah anggap dari segi bidang kuasa mahkamah dan ia berdasarkan doktrin spekulatif tanpa asas perlembagaan. Afidavit-afidavit sokongan mengulangi naratif politik dan reputasi dan bukannya mengenal pasti kontroversi undang-undang yang tepat berdasarkan teks perlembagaan (lihat perenggan 6 & 9).

(2) Tiada perampasan kebebasan kerana fakta yang nyata adalah bahawa defendan kekal bebas, tanpa sebarang pengurangan pergerakan atau kapasiti undang-undang. Tindakan memerlukan defendan untuk

menjawab tuntutan sivil — walau bagaimanapun sensitif dari segi politik — tidak melibatkan perkara 5(1) PP, dan tiada duluan yang telah melanjutkan skopnya untuk merangkumi pendedahan litigasi sivil. Hujah bahawa perkara 5(1) PP dilanggar semata-mata dengan kewujudan tuntutan tort adalah tidak disokong dalam undang-undang perlembagaan. Oleh itu, perkara 5(1) PP tidak terlibat, dan tiada interpretasi atau kesan peruntukan ini timbul dalam penyelesaian tuntutan ini (lihat perenggan 12–13).

(3) Perkara 8(1) PP adalah perisai, bukan pedang untuk kekebalan. Peruntukan itu menjamin layanan undang-undang yang sama, bukan pengecualian daripada undang-undang. Defendan tidak menunjukkan bahawa terdapat sebarang tingkah laku diskriminasi oleh mahkamah atau undang-undang. Defendan tidak menunjukkan bahawa dia dinafikan perlindungan undang-undang yang diberikan kepada orang lain, atau bahawa mana-mana peruntukan undang-undang beroperasi secara tidak sama rata terhadapnya. Tambahan pula, semata-mata dakwaan mala fide adalah tidak mencukupi. Walaupun defendan membangkitkan motif politik dan penyalahgunaan proses, pembelaan sedemikian tersedia di bawah undang-undang sivil am. Oleh itu, tiada isu tulen atau boleh dipertikaikan mengenai interpretasi atau aplikasi perkara 8(1) PP timbul untuk mewajarkan rujukan kepada Mahkamah Persekutuan (lihat perenggan 15–16).

(4) Perkara 39 PP adalah peruntukan kuasa struktur dan tidak memberikan sebarang kekebalan peribadi kepada Perdana Menteri atau ahli Kabinet. Tiada apa-apa dalam perkara 39 PP yang mencadangkan, secara nyata atau tersirat, bahawa kuasa eksekutif termasuk perlindungan terhadap liabiliti sivil peribadi. Oleh itu, perkara 39 PP yang dipetik tidak beroperasi dalam konteks permohonan defendan untuk rujukan perlembagaan (lihat perenggan 18).

(5) Kebergantungan defendan pada perkara 40 PP sebagai asas untuk kekebalan perlembagaan adalah salah. Peruntukan itu berdiam diri mengenai hak atau liabiliti peribadi, dan tiada isu mengenai interpretasi atau kesahihannya timbul dalam saman ini. Ia tidak mempunyai kaitan undang-undang dengan kausa tindakan tort yang dipohon oleh plaintif (lihat perenggan 20).

(6) Tiada klausa dalam perkara 43 PP yang melindungi seorang Perdana Menteri yang sedang memegang jawatan daripada kebertanggungjawapan berhubung dengan tindakan peribadi yang dilakukan sebelum memegang jawatan. Kesenyapan perlembagaan tidak sama dengan kekebalan. Tiada satu pun daripada perkara PP yang dipetik oleh defendan menimbulkan sebarang soalan undang-undang perlembagaan yang sebenar, substantif, atau boleh diadili yang memerlukan penentuan oleh Mahkamah Persekutuan di bawah perkara

128(2) PP atau s 84 AMK. Penggunaan defendan terhadap peruntukan ini adalah berdasarkan salah pengenalpastian peruntukan struktur sebagai memberikan kekebalan peribadi substantif, yang mana tidak disokong teks perlembagaan (lihat perenggan 22–23).

(7) Ideologi 'kemudaratan konstruktif' kepada pejabat Perdana Menteri yang mewajarkan kekebalan perlembagaan tidak mempunyai asas tekstual atau perundangan. Tiada peruntukan dalam PP yang menyiratkan kekebalan untuk Perdana Menteri daripada saman sivil. Oleh kerana saman ini tidak melibatkan kesahihan mana-mana undang-undang atau pertikaian Persekutuan-Negeri tetapi tuntutan peribadi di bawah undang-undang tort, oleh itu ia termasuk sepenuhnya dalam bidang kuasa mahkamah ini. Saman ini difailkan sebelum defendan memegang jawatan Perdana Menteri dan tiada bukti bahawa dia tidak dapat melaksanakan fungsi perlembagaannya disebabkan oleh kes ini. Oleh itu, cadangan bahawa litigasi ini membebankan cabang eksekutif adalah tidak disokong dan spekulatif (lihat perenggan 24 & 33–34).]

Cases referred to

Dato Seri Anwar Ibrahim v Government of Malaysia & Anor [2020] 4 MLJ 133, FC (folld)

Gan Boon Aun v PP [2017] 3 MLJ 12, FC (refd)

Haris Fathillah bin Mohamed Ibrahim & Ors v Tan Sri Dato' Sri Hj Azam bin Baki & Ors [2023] 2 MLJ 296, FC (refd)

Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545, FC (refd)

Lee Kwan Woh v PP [2009] 5 MLJ 301; [2009] 2 MLRA 286; [2009] 5 CLJ 631; [2010] 2 AMR 231; [2010] 2 AMR 245, FC (refd)

PP v Kok Wah Kuan [2008] 1 MLJ 1, FC (folld)

Sugumar Balakrishnan v Pengarah Imigresen Negeri Sabah & Anor [1998] 3 MLJ 289; [1998] 1 MLRA 509, CA (refd)

Syed Iskandar Syed Jaafar v Kerajaan Malaysia & Ors [2023] 8 MLJ 197; [2023] 1 CLJ 642, HC (refd)

Tony Pua Kiam Wee v Government of Malaysia and another appeal [2019] 12 MLJ 1; [2020] 1 CLJ 337, FC (refd)

Wee Choo Keong v Lee Chong Meng & Anor [1996] 3 MLJ 41; [1996] 3 CLJ 508; [1996] 1 MLRA 367; [1996] 2 AMR 1470, CA (folld)

Zulkiflee bin SM Anwarul Haque v Ketua Pengarah Jabatan Imigresen Malaysia & Ors [2018] MLJU 220; [2018] 1 LNS 244, HC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 84, 84(1)
Federal Constitution arts 5, 5(1), 8, 8(1), 39, 40, 43, 125, 128(2)
Rules of Court 2012 O 18 r 19, O 92 r 4

Muhammad Rafique bin Rashid Ali (with Nurmustanir bin Md Nor and Muhd Amirul Ar-Rasyid bin Azman) (Law Practice of Rafique) for the plaintiff.
Megat Abdul Munir Megat Abdullah Rafaie (with Alan Wong Teck Wei, Mohd Shahir Md Tahir, Kavyaasrini S Mahendran, Rajasegaran Krishnan and Mohamad Amin Feisal bin Azam (Pupil in Chambers)) (Zain Megat & Murad) for the defendant.

Roz Mawar J:

[1] The trial for this case is fixed for 16 June 2025. By way of encl 145 filed on 23 May 2025, the defendant seeks to:

(a) refer constitutional questions to the Federal Court listed in Appendix A — touching on whether a sitting Prime Minister enjoys certain immunities or protections from civil litigation relating to pre-office conduct — under O 92 r 4 of the Rules of Court 2012 ('the ROC') and/or art 128(2) of our Federal Constitution and/or s 84 of the Courts of Judicature Act 1964 ('the CJA'); and

(b) stay the trial that is fixed to commence on 16 June 2025 pending the Federal Court's determination of those constitutional questions.

[2] The application is advanced notwithstanding the defendant's express position, through his counsel at the oral arguments, that he is ready and willing to proceed with trial. It is apparent, as submitted by the defendant's counsel, that this application is largely exploratory in nature, filed at the instance of newly appointed solicitors to test whether the Federal Constitution accords the Prime Minister any form of procedural immunity or protection from civil liability while in office. The defendant does not assert that the suit impairs his ability to perform his constitutional functions, nor has he produced any evidence to that effect.

[3] The defendant's application arises in the context of a civil action instituted by the plaintiff against him in his personal capacity, alleging sexual assault and trespass to person said to have been committed on 2 October 2018. This case was filed at the High Court in July 2021, prior to the defendant's appointment as the Prime Minister in November 2022.

[4] It was submitted for the defendant that the continuation of these proceedings engages constitutional issues concerning the interpretation and effect of arts 5, 8, 39, 40, and 43 of our Federal Constitution. It was further suggested that a sitting Prime Minister should be insulated from the burdens of civil litigation, and that this court ought to refer these issues for the determination of the Federal Court pursuant to art 128(2) of our Federal Constitution.

[5] Eight questions were authored in the defendant's application for referral to the Federal Court. The grounds cited by the defendant said to be critical constitutional issues are:

(a) art 5(1) of our Federal Constitution — right to life and personal liberty:
It was contended for the defendant that being subjected to a civil trial while holding the office of Prime Minister infringes his liberty interests under art 5(1), on the basis that it imposes undue burden and distraction from the discharge of executive functions (framed in questions 5 and 8);

(b) art 8(1) of our Federal Constitution — equality before the law:
It was submitted that the defendant is being selectively exposed to litigation in a manner that violates the principle of equal protection, implying that the Prime Minister should receive distinct treatment under the law (framed in questions 2 and 6);

(c) arts 39, 40, and 43 of our Federal Constitution — Executive authority, Yang di-Pertuan Agong to act on advice, and Cabinet:
It was argued for the defendant that these provisions collectively vest the executive authority of the Federation in the Yang di-Pertuan Agong acting on Cabinet advice, with the Prime Minister at its helm, and that subjecting the Prime Minister to civil litigation while in office undermines or disrupts this constitutional structure (framed in question 1);

(d) doctrine of 'constructive harm':
The counsel for the defendant introduced this idea — though not anchored on any express constitutional provision, that permitting a Prime Minister to be sued while in office causes 'constructive harm' to the institution of the Executive, and this 'harm' triggers constitutional protection (framed in questions 3 and 4); and

(e) institutional proportionality:
It was put forth to this court that the adjudication of politically sensitive private tort claims against the sitting Prime Minister, in the absence of a constitutional scrutiny threshold, violates the principle of institutional proportionality and offends the basic structure of the Federal Constitution by upsetting the functional balance between the Judiciary and the Executive (framed in question 7).

THIS COURT'S ASSESSMENT

[6] Based on a careful reading of the affidavits-in-support (encls 146 and 149), and the consideration of the submissions by all parties (both written and oral arguments), the threshold under s 84 of the CJA is not met, and the constitutional questions posed appear more speculative or academic than genuinely arising from the proceedings. This court finds that those proposed

questions were not necessary for the disposal of this case. The defendant's application was misconceived as to the jurisdiction of the courts and it was based on speculative doctrines with no constitutional footing. This court's assessment is detailed below.

STATUTORY THRESHOLD UNDER S 84 OF THE CJA

[7] To trigger a reference to the Federal Court under s 84(1) of the CJA, the following must be satisfied:

(a) a genuine and substantial constitutional question arises as to the effect of any provision of our Federal Constitution;

(b) the question(s) must be material to the disposal of this case;

(c) the interpretation or effect of a constitutional provision must be directly in issue; and

(d) the question must not be frivolous or hypothetical and must be necessary to decide this case before this court.

The Court of Appeal's decision of *Wee Choo Keong v Lee Chong Meng & Anor* [1996] 3 MLJ 41; [1996] 3 CLJ 508; [1996] 1 MLRA 367; [1996] 2 AMR 1470 is authoritative. See also Justice Azizah Nawawi's decision in *Zulkiflee bin SM Anwarul Haque v Ketua Pengarah Jabatan Imigresen Malaysia & Ors* [2018] MLJU 220; [2018] 1 LNS 244 at the High Court, and also Justice Wan Ahmad Farid Salleh's decision in *Syed Iskandar Syed Jaafar v Kerajaan Malaysia & Ors* [2023] 8 MLJ 197; [2023] 1 CLJ 642 at the High Court.

[8] The proposed questions sought to be referred to the Federal Court are reproduced herein for easy reference:

Question 1

Whether Articles 39, 40, and 43 of the Federal Constitution, a sitting Prime Minister enjoys a qualified immunity from civil suits in respect of alleged private acts predating his appointment, where the continuation of such litigation would impair the effective discharge of his executive functions and undermine the constitutional separation of powers.

Question 2

Whether the High Court, in allowing a civil suit against a sitting Prime Minister, where he has raised a credible plea of abuse of process (including allegations of politically motivated reputational sabotage and a manufactured claim), violates the constitutional guarantee of equality before the law under Article 8(1).

Question 3

Whether the Federal Constitution, by necessary implication, requires courts to conduct a threshold inquiry, prior to trial, into whether a civil suit against a sitting Prime Minister (based on pre-office conduct) constitutes an abuse of process or a

threat to public interest, and if so, whether such proceedings must be stayed or dismissed to preserve constitutional governance.

Question 4

Whether permitting a civil suit against a sitting Prime Minister where the allegations predate his tenure and the PM has stated evidence of mala fides, violates the Basic Structure Doctrine by destabilising a core institution of government, contrary to the Federal Constitution's fundamental structure.

Question 5

Whether a sitting Prime Minister is entitled, under Article 5(1) (right to life and personal liberty), to protection from vexatious litigation that is strategically timed or politically weaponised to undermine his ability to govern, particularly where the suit (i) relates to alleged pre-office conduct, and (ii) lacks prima facie merit but carries severe reputational and functional consequences.

Question 6

Whether the continuation of civil proceedings against a sitting Prime Minister, based on private allegations but prosecuted in a political context, offends the constitutional guarantee of equality under Article 8(1) and the implied constitutional principle against abuse of legal process for collateral purposes.

Question 7

Whether the adjudication of politically sensitive private tort claims against the Prime Minister, in the absence of such threshold constitutional scrutiny, violates the principle of institutional proportionality and offends the basic structure of the Federal Constitution by upsetting the functional balance between the Judiciary and the Executive.

Question 8

Whether the courts are constitutionally obliged under Article 5(1), read in light of the principle of due process and natural justice, to protect a public officeholder's liberty and dignity from litigation that may impair the ability to discharge public duties, where no criminal guilt has been established.

[9] The affidavits-in-support, affirmed by the newly appointed solicitor, repeated political and reputational narratives rather than identifying precise legal controversies grounded in constitutional text. Noted is a reliance on broad, abstract doctrines (doctrine of 'constructive harm', 'institutional proportionality, and even the general mention of the basic structure doctrine) without tethering them to any specific operative provision of our Federal Constitution, whose validity or interpretation is actually said to be impugned. There is also an assertion of novel constitutional protections not previously recognised in Malaysian jurisprudence (eg executive immunity only for the Prime Minister — to the court's query on whether this proposition extended to all Ministers and *Jemaah Menteri,* the defendant's counsel stated it concerned only the Prime Minister, for civil liability arising from private conduct prior to assuming public office).

ASSESSMENT OF ALLEGED CONSTITUTIONAL QUESTIONS

[10] This court has considered the defendant's reliance on arts 5(1) and 8(1) of our Federal Constitution as forming the foundation of alleged constitutional questions justifying a reference to the Federal Court under s 84 of the CJA. Articles 39, 40 and 43 of our Federal Constitution were also cited to assert that the Prime Minister, as the head of the Executive, ought to be immune from civil proceedings for alleged private acts that occurred before assuming office, on the basis that such litigation disrupts executive function and undermines constitutional governance. They too, were considered by this court. The following is this court's assessment and finding.

Article 5(1) of the Federal Constitution: Right to life and personal liberty

[11] Article 5(1) provides:

> No person shall be deprived of his life or personal liberty save in accordance with law.

[12] The defendant contends that exposure to civil litigation in relation to alleged acts committed prior to assuming public office constitutes a deprivation of personal liberty, particularly where such litigation is alleged to be vexatious or politically motivated. This argument is untenable for the following reasons:

(a) jurisprudential scope of art 5(1) has been decided by the Federal Court in *Sugumar Balakrishnan v Pengarah Imigresen Negeri Sabah & Anor* [1998] 3 MLJ 289; [1998] 1 MLRA 509 and *Lee Kwan Woh v Public Prosecutor* [2009] 5 MLJ 301; [2009] 2 MLRA 286; [2009] 5 CLJ 631; [2010] 2 AMR 231; [2010] 2 AMR 245 has consistently held that art 5(1) of our Federal Constitution is engaged in cases involving unlawful detention, arrest, or state-sanctioned restrictions on physical liberty. It does not extend to mere inconvenience, reputational risk, or institutional burden occasioned by civil proceedings;

(b) no deprivation of liberty as the apparent fact is that the defendant remains at liberty, without any curtailment of movement or legal capacity. The act of requiring a defendant to respond to a civil claim — however politically sensitive, does not implicate art 5(1) of our Federal Constitution, and no precedent has stretched its ambit to encompass civil litigation exposure; and

(c) due process safeguards exist as here in this case, the ordinary procedural safeguards in civil litigation (pleadings, discovery, fair hearing) are fully available to the defendant. The contention that art 5(1) of our Federal

Constitution is violated merely by the existence of a tort claim is unsupported in constitutional law.

[13] Accordingly, art 5(1) of our Federal Constitution is not engaged, and no interpretation or effect of this provision arises in the resolution of this claim.

Article 8(1) of our Federal Consitution: Equality before the law

[14] Article 8(1) provides:

> All persons are equal before the law and entitled to the equal protection of the law.

[15] Argued for the defendant was that the continuation of the civil suit fixed for 16 June 2025 offends this provision, on grounds that: (i) he is being selectively targeted due to his public office; and (ii) allowing the suit to proceed without a threshold inquiry into abuse of process creates inequality of treatment. This submission is, with respect, without merit for the following reasons:

(a) art 8(1) of our Federal Constitution is a shield, not a sword for immunity. The provision guarantees equal legal treatment, not exemption from the law. As held in *Public Prosecutor v Kok Wah Kuan* [2008] 1 MLJ 1, art 8(1) of our Federal Constitution does not operate to immunise individuals from civil liability. Rather, it ensures that all persons — including public office holders — are equally subject to the rule of law;

(b) the defendant has not shown that there was any discriminatory conduct by the courts or the law. The plaintiffs suit was filed under the same procedural and substantive law applicable to all Malaysians and foreigners alike in this country. The defendant has not demonstrated that he is being denied legal protection afforded to others, or that any legal provision operates unequally against him; and

(c) mere allegation of mala fides is insufficient. While the defendant raises political motive and abuse of process, such defences are available under general civil law (eg O 18 r 19 of the ROC, res judicata, abuse of process doctrines). The existence of these remedies reflects the very equality of treatment guaranteed by art 8(1) of our Federal Constitution.

[16] Hence, no genuine or arguable issue as to the interpretation or application of art 8(1) of our Federal Constitution arises to warrant a reference to the Federal Court.

Article 39 of our Federal Constitution: Executive authority of the Federation

[17] Article 39 provides:

> The executive authority of the Federation shall be vested in the Yang di-Pertuan Agong and exercisable by him or by the Cabinet or any Minister authorised by the Cabinet.

[18] This provision merely vests executive authority in the Yang di-Pertuan Agong and, by extension, in the Cabinet as the operational arm of the Executive. It is a structural allocation of powers and does not confer any personal immunity upon the Prime Minister or Cabinet members. Nothing in art 39 of our Federal Constitution suggests, expressly or impliedly, that executive authority includes protection against personal civil liability. Thus, this court finds that art 39 of our Federal Constitution cited inoperative in the context of the defendant's application for constitutional reference.

Article 40 of our Federal Constitution: Yang di-Pertuan Agong to act on advice

[19] Article 40 outlines the constitutional convention that the Yang di-Pertuan Agong shall act in accordance with advice given by the Cabinet or a Minister. This provision governs executive decision-making processes but does not touch on private civil liabilities of individual members of the Executive.

[20] The defendant's reliance on art 40 of our Federal Constitution as a basis for constitutional immunity is misplaced. The provision is silent on personal rights or liabilities, and no issue as to its interpretation or validity arises in this suit. It bears no legal connection to the tortious cause of action pleaded by the plaintiff.

Article 43 of our Federal Constitution: The Cabinet and appointment of the Prime Minister

[21] Article 43 provides for the establishment of the Cabinet and the appointment of the Prime Minister and Ministers. It states, inter alia, that:

> The Cabinet shall be appointed by the Yang di-Pertuan Agong ... from among the members of either House of Parliament ...

[22] The defendant contends that allowing a civil suit based on pre-appointment conduct may undermine the Prime Minister's ability to discharge executive functions, inflicts reputational harm and destabilise the office of the Prime Minister, thereby violating the constitutional structure envisaged by art 43 of our Federal Constitution. However, this argument is flawed for several reasons:

(a) no immunity implied in art 43 of our Federal Constitution. The provision deals solely with appointments and tenure and does not prescribe or imply immunity from judicial proceedings. No clause in

art 43 of our Federal Constitution shields a sitting Prime Minister from accountability in respect of private acts committed prior to assuming office;

(b) constitutional silence is not equivalent to immunity. The absence of express immunity under arts 39, 40 and 43 of our Federal Constitution is telling. Unlike certain common law jurisdictions with codified immunities, Malaysia's Federal Constitution is silent, and that silence must be interpreted in favour of equal legal accountability, not implied executive privilege; and

(c) established doctrine of equality before the law. As recognised by the Federal Court in *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545, constitutional supremacy demands that all persons — including public officeholders, are equally subject to the rule of law.

[23] In light of the above, this court finds none of the articles of our Federal Constitution cited by the defendant give rise to any real, substantial, or justiciable question of constitutional law requiring determination by the Federal Court under art 128(2) of our Federal Constitution or s 84 of the CJA. The defendant's invocation of these provisions is based on a mischaracterisation of structural provisions as conferring substantive personal immunity, which the constitutional text does not support.

DOCTRINE OF 'CONSTRUCTIVE HARM'

[24] When the defendant's legal team was granted the opportunity to respond to the plaintiff's vehement objection against this application to stay the trial of this case to enable a referral of the proposed questions to the Federal Court, a mind map was produced to explain the ideology of 'constructive harm' to the Prime Minister's office that warrants constitutional immunity. However, this ideology has no textual or jurisprudential basis. No provision in our Federal Constitution implies immunity for the Prime Minister from civil suits. The defendant's legal team could not clearly anchor this proposed doctrine to any particular Article or legal test. The argument, at best, may rooted in perhaps policy concerns rather than constitutional law.

[25] The only case law stressed upon during the submissions for the defendant was the Federal Court's decision in *Haris Fathillah bin Mohamed Ibrahim & Ors v Tan Sri Dato' Sri Hj Azam bin Baki & Ors* [2023] 2 MLJ 296. It deals with judicial oversight of enforcement powers, not immunity for public officials. It was submitted on behalf of the defendant that: 'It exemplifies a principled purposive and expansive approach to constitutional interpretation, one that prioritises institutional continuity and stability, structural balance,

separation of powers and the implied architecture of the Federal Constitution against collateral misuse of legal processes'. A

[26] However, a close reading of *Haris Fathilllah* reveals otherwise. The Federal Court was asked to decide on two constitutional questions framed on art 125 of our Federal Constitution. It was held that sitting judges are not immune from lawful investigation. Serving superior court judges can be criminally investigated and prosecuted without first being suspended or removed from office and that art 125 of our Federal Constitution deals with judicial discipline, not criminal immunity. It was concluded that the constitutional disciplinary mechanism was never intended as a precondition to criminal proceeding. B C

[27] The Federal Court did not endorse the doctrine of 'constructive harm' or implied immunity doctrines, nor did it suggest that Prime Ministers or Ministers ought to be protected from civil litigation to preserve structural balance. There was no 'expansive interpretation' shielding officials from civil claims. The Federal Court engaged in purposive interpretation to promote accountability, not to construct implied protections from liability. It did not create new constitutional doctrines, nor did it dilute the principles of legal equality or judicial oversight. D E

[28] It is a significant fact that the subject matter in *Haris Fathillah* concerned public interest litigation, not personal tort liability. It was public law enforcement discretion, not a private law claim like sexual assault or trespass to the person as pleaded by the plaintiff in this case. This distinction is crucial: the decision is entirely inapplicable to a private tort claims brought against a public official in his personal capacity for alleged pre-office conduct. F

[29] Ultimately, the Federal Court reasserted legal limits. It did not issue sweeping declarations about structural balance or constitutional insulation. Instead, it emphasised the limits of judicial review and the importance of adhering to proper standing and justiciability requirements. There is no principle established in that case granting pre-suit protocols for members of the Executive as proposed by the defendant's counsel, and thus, it does not support the defendant's call for a constitutional filter and protocols just for the Prime Minister. G H

[30] The defendant's reliance on *Haris Fathillah* to support a constitutional reference is misplaced. The case does not establish any principle or precedent that supports the notion of: I

(a) implied immunity for the Prime Minister;

(b) the necessity of pre-litigation protocols; or

(c) any bar against civil suits for personal acts preceding assumption of public office.

[31] Rather than supporting the defendant's case, *Haris Fathillah* affirms that constitutional adjudication must remain grounded in clear legal grievance, justiciability, and the proper limits of judicial power.

[32] The Federal Court's Decision in *Dato Seri Anwar Ibrahim v Government of Malaysia & Anor* [2020] 4 MLJ 133 is binding. This Federal Court authority, involving the present defendant himself, confirms that the Federal Court's original jurisdiction is confined to: (a) Federal-State disputes; (b) inter-state disputes; and (c) challenges to the validity of laws on grounds of legislative incompetence. All other constitutional questions fall within the jurisdiction of the High Court, including disputes involving fundamental liberties and public officers' liabilities.

[33] As apparent, this suit does not involve the validity of any law, nor a Federal-State dispute. It is a private claim under tort law and therefore falls squarely within this court's jurisdiction.

[34] This suit was filed before the defendant assumed the office of Prime Minister and there is no proof that he is unable to discharge his constitutional functions due to this case. The defendant has in fact stated, through his counsel, that he is ready to proceed to trial. Thus, the suggestion that this litigation burdens the executive branch is unsupported and speculative.

[35] The learned counsel for the plaintiff had raised the issue of delay, highlighting that a period of 912 days had elapsed from the date the defendant assumed the office of Prime Minister in November 2022 to the filing of the present application a few days ago seeking a reference to the Federal Court. Notwithstanding the chronology, this court has nonetheless accorded full and careful consideration to the merits of the application. This is because, if the requirements under s 84 of the CJA are met and genuine constitutional issues are disclosed, a reference to the Federal Court would be warranted regardless of the stage of the proceedings. The question of delay, while relevant, cannot by itself defeat an otherwise competent application under the law.

CONCLUSION

[36] This court makes the considered findings that there are no genuine constitutional questions. From a judicial perspective, the proposed questions do not appear to meet the threshold of genuine constitutional controversy for several reasons. Firstly, the underlying cause is a tortious civil suit, not a constitutional claim. The defendant's attempt to constitutionalise the defence

(via arts 5, 8, 39, 40 and 43) does not make those issues necessary to resolve the case. At the end of the day, it is a private law claim that cannot be framed as a constitutional challenge.

[37] Secondly, and as paramount is that there is no express constitutional or statutory immunity accorded to a sitting Prime Minister for private acts pre-office. No 'question of law' regarding interpretation of existing immunity arises — only whether this court should create one. There is no statutory immunity as pondered by the defendant.

[38] Thirdly, the alleged threat to executive function is not supported by specific evidence demonstrating interference with governance. The assertions are speculative (eg about mala fides, political sabotage) and not dispositive of any legal right or defence. There are overbreadth and hypothetical concerns.

[39] Fourthly, there is a mischaracterisation of art 5(1) of our Federal Constitution. Article 5 protects against unlawful detention and deprivation of liberty. There is no precedent suggesting it provides immunity against tort suits. Expanding it to litigation-induced inconvenience is tenuous

[40] This court — the High Court in which the trial will be conducted, can resolve the tort claim on ordinary evidential and legal grounds without interpreting any constitutional provision. Thus, there is no real need to decide the question to dispose of the suit.

[41] This court is mindful of the Federal Court's decision in *Dato Seri Anwar Ibrahim* that reiterated not every question touching on the Constitution ought to be referred. The question must be real, not abstract, and necessary for the disposal of the matter at hand.

[42] Similarly, in *Kok Wah Kuan* the Federal Court warned against stretching constitutional provisions to cover areas not intended by their framers. There is, accordingly, no operative constitutional issue flowing from arts 5, 8, 39, 40 or 43 of our Federal Constitution that is material to the disposal of the present tortious claim. The questions posed are not real, substantial, or necessary for the disposition of the case. They are highly politicised re-framings of a tort defence. The defendant's application appears to cloak a civil defence in constitutional garb and fails to meet the statutory and jurisprudential threshold for reference under s 84 of the CJA.

[43] Having considered the application in its entirety, this court is of the view that the constitutional questions framed by the defendant are not real, substantial, or necessary for the disposal of the present suit. The issues raised do not call for the interpretation of any ambiguity in our Federal Constitution,

nor do they relate to the validity of any legislation, or the scope of legislative competence under art 128(2) of our Federal Constitution.

[44] The principles laid down by the Federal Court in *Gan Boon Aun v Public Prosecutor* [2017] 3 MLJ 12 and *Tony Pua Kiam Wee v Government of Malaysia and another appeal* [2019] 12 MLJ 1; [2020] 1 CLJ 337 make clear that not every question which touches on the constitution qualifies for referral under s 84 of the CJA. This court must be satisfied that the constitutional question is both genuine and material to the resolution of the case. The Federal Court is not a forum for speculative or defensive advisory opinions.

[45] This present application discloses no such question. The suit concerns a personal claim against the defendant for alleged acts occurring prior to his assumption of office. There is no suggestion that the defendant is unable to discharge his constitutional duties, and the defendant has indicated readiness to proceed with trial as scheduled on 16 June 2025. It is this court's considered conclusion that s 84 of the CJA is not satisfied. This court therefore, declines to refer the proposed questions to the Federal Court.

[46] The defendant's application under encl 145 is hereby dismissed. Costs of RM20,000 is awarded to the plaintiff. Trial to commence on 16 June 2025 as scheduled.

Defendant's application dismissed.

Reported by Nabilah Syahida Abdullah Salleh